

SENATE BILL 2201
By Clabough

AN ACT to amend Tennessee Code Annotated, Title 66, Chapter 5, to enact the "Tennessee New Home Warranty Act."

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 66, Chapter 5, is amended by adding sections 2-10 as a new appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee New Home Warranty Act".

SECTION 3. As used in this part, unless the context otherwise requires:

(1) "Builder" means any person, corporation, partnership, or other entity that constructs a home, including a home occupied initially by its builder as such builder's residence;

(2) "Building standards" means the standards contained in the building code, plumbing code, and electrical code in effect in the city or county where a home is to be located, at the time construction of that home is commenced, or, if the city or county has not adopted such codes, the performance standards which the builder may undertake to be in compliance;

(3) "Home" means any new structure designed and used only for residential use;

(4) "Initial purchaser" means any person for whom a home is built or the first person to whom a home is sold upon completion of construction;

(5) "Major structural defect" means any actual physical damage to the following designated load-bearing portions of a home caused by failure of the load-bearing portions which affects their load-bearing functions to the extent the home becomes unsafe, unsanitary, or is otherwise unlivable:

(A) Foundation systems and footings;

- (B) Load-bearing beams;
- (C) Girders;
- (D) Lintels, other than lintels supporting veneers;
- (E) Columns;
- (F) Bearing walls and partitions;
- (G) Floor systems, structural slabs, joists and trusses only;
- (H) Roof framing systems and members, rafters and trusses only; or
- (I) Foundation systems and footings, which are an integral part of the

home and structurally attached;

(6) "Owner" means the initial purchaser of a home and any of such purchaser's successors in title to a home during the time the warranties provided under this part are in effect; and

(7) "Warranty commencement date" means the date that legal title to a home is conveyed to its initial purchaser or the date the home is first occupied, whichever occurs first.

SECTION 4. (a) A builder of a new home shall provide the owner with a new home warranty on the home through an approved warranty provider. The time periods of warranties established pursuant to this part are as follows:

(1) One (1) year following the warranty commencement date, the home shall be free from defects caused by faulty workmanship and defective materials;

(2) Two (2) years following the warranty commencement date, the home shall be free from defects caused by faulty installation of plumbing, electrical, heating, cooling, and ventilating systems. However, in the case of appliances, no warranty shall exceed the length and scope of the warranty offered by the manufacturer; and

(3) Ten (10) years following the warranty commencement date, the home shall be free from major structural defects.

(b) The provisions of this section establish minimum required warranties and shall not be waived by the owner or reduced by the builder provided the home is a single family dwelling to be occupied by an owner as such owner's home.

SECTION 5. Unless the parties otherwise agree in writing, the builder's warranty shall exclude the following items:

(1) Fences, landscaping, including, but not limited to, sodding, seeding, shrubs, trees, and plantings, as well as off-site improvements, all driveways and walkways, or any other improvement not a part of the home itself;

(2) After the first year, the concrete floor of a basement and the concrete floor of an attached garage that is built separate from a foundation wall or other structural element of the home;

(3) Damage to real property which is not part of the home covered by the warranty and which is not included in the purchase price of the home;

(4) Any damage to the extent it is caused or made worse by any of the following:

(A) Negligence, improper maintenance, or improper operation by anyone other than the builder or any employee, agent, or subcontractor of the builder;

(B) Failure by anyone other than the builder or any employee, agent, or subcontractor of the builder to comply with the warranty requirements of manufacturers of appliances, equipment, or fixtures;

(C) Failure by the owner to give written notice by registered or certified mail to the builder of any defect within a reasonable time;

(D) Any change of the grading of the ground by anyone other than the builder, or any employee, agent, or subcontractor of the builder;

(E) Any change, alteration, or addition made to the home by anyone after the initial occupancy by the owner, except any change, alteration, or addition performed by the builder, or any employee, agent, or subcontractor of the builder;

(F) Dampness, condensation, or other damage due to the failure of the owner to maintain adequate ventilation or drainage;

(5) Any loss or damage which the owner has not taken timely action to minimize;

(6) Any defect in, or any defect caused by, materials or work supplied by anyone other than the builder, or any employee, agent, or subcontractor of the builder;

(7) Normal wear and tear or nominal deterioration;

(8) Loss or damage which does not constitute a defect in the construction of the home by the builder, or any employee, agent, or subcontractor of the builder;

(9) Loss or damage resulting from war, accident, riot and civil commotion, water escape, falling objects, aircraft, vehicles, acts of God, lightning, windstorm, hail, flood, mudslide, earthquake, volcanic eruption, wind driven water, and changes in the level of the underground water table which are not reasonably foreseeable;

(10) Any damage caused by soil movement which is covered by other insurance;

(11) Insect damage;

(12) Any loss or damage which arises while the home is being used primarily for a nonresidential purpose;

(13) Any condition which does not result in actual physical damage to the home;

(14) Bodily injury or damage to personal property;

(15) Any cost of shelter, transportation, food, moving, storage, or other incidental expense related to relocation during repair;

(16) Any defect not reported in writing by registered or certified mail to the builder or insurance company, as appropriate, prior to the expiration of the period of coverage of that defect plus thirty (30) days;

(17) Consequential damages; and

(18) Any loss or damage to a home caused by soil conditions or soil movement if the home is constructed on land owned by the initial purchaser and the builder obtains a written waiver from the initial purchaser for any loss or damage caused by soil conditions or soil movement.

SECTION 6. Before the owner undertakes any repair or institutes any action for breach of warranty, such owner shall give the builder written notice, by registered or certified mail, advising the builder of the defects and giving the builder a reasonable opportunity to comply with the provisions of this part.

SECTION 7. All or part of the builder's obligation under any warranty required in this part may be insured by the builder for the benefit of the purchaser through an insurance company authorized to transact business in this state.

SECTION 8. Any warranty imposed under the provisions of this part and any insurance benefit shall automatically transfer without charge, to a subsequent owner who acquires title to the home. Any transfer of the home shall not extend the duration of any warranty or insurance coverage.

SECTION 9.

(a) If a builder violates this part by failing to perform as required by the warranties provided herein, any affected owner shall have a cause of action against the builder for actual damages, including attorney fees and court costs, arising out of the violation. The damages with respect to a single defect shall not exceed the reasonable cost of repair or replacement necessary to cure the defect and damages with respect to all defects in the home shall not exceed the original purchase price of the home.

(b) The parties may provide for the arbitration of any claim in dispute.

SECTION 10. This part provides the exclusive remedies, warranties, and prescriptive methods as between builder and owner relative to home construction and no other provisions of law relative to warranties and redhibitory vices and defects shall apply. Nothing herein shall be construed as affecting or limiting any warranty of title to land or improvements.

SECTION 11. This act shall take effect upon becoming a law, the public welfare requiring it.